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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
10/823,369	04/13/2004	Marc Richelsoph	2184.00091	4869

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EXAMINER

STOKES, CANDICE CAPRI

ART UNIT	PAPER NUMBER
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3732

SHORTENED STATUTORY PERIOD OF RESPONSE	MAIL DATE	DELIVERY MODE
3 MONTHS	01/30/2007	PAPER

Please find below and/or attached an Office communication concerning this application or proceeding.

If NO period for reply is specified above, the maximum statutory period will apply and will expire 6 MONTHS from the mailing date of this communication.

Office Action Summary

Application No.

10/823,369

Applicant(s)

RICHELSON, MARC

Examiner

Candice C. Stokes

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-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) OR THIRTY (30) DAYS, WHICHEVER IS LONGER, FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

Status

- 1) ☒ Responsive to communication(s) filed on 09 October 2006.
- 2a) ☐ This action is **FINAL**. 2b) ☒ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

Disposition of Claims

- 4) ☒ Claim(s) 1-8 and 32-41 is/are pending in the application.
- 4a) Of the above claim(s) _____ is/are withdrawn from consideration.
- 5) ☒ Claim(s) 32-37, 40 and 41 is/are allowed.
- 6) ☒ Claim(s) 1-8, 38 and 39 is/are rejected.
- 7) ☐ Claim(s) _____ is/are objected to.
- 8) ☐ Claim(s) _____ are subject to restriction and/or election requirement.

Application Papers

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☐ The drawing(s) filed on _____ is/are: a) ☐ accepted or b) ☐ objected to by the Examiner.
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

Priority under 35 U.S.C. § 119

- 12) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All b) ☐ Some * c) ☐ None of:
- ☐ Certified copies of the priority documents have been received.
 - ☐ Certified copies of the priority documents have been received in Application No. _____.
 - ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

* See the attached detailed Office action for a list of the certified copies not received.

Attachment(s)

- | | |
|--|---|
| 1) <input type="checkbox"/> Notice of References Cited (PTO-892) | 4) <input type="checkbox"/> Interview Summary (PTO-413)
Paper No(s)/Mail Date. _____ |
| 2) <input type="checkbox"/> Notice of Draftsperson's Patent Drawing Review (PTO-948) | 5) <input type="checkbox"/> Notice of Informal Patent Application |
| 3) <input type="checkbox"/> Information Disclosure Statement(s) (PTO/SB/08)
Paper No(s)/Mail Date _____ | 6) <input type="checkbox"/> Other: _____ |

DETAILED ACTION

Continued Examination Under 37 CFR 1.114

A request for continued examination under 37 CFR 1.114, including the fee set forth in 37 CFR 1.17(e), was filed in this application after final rejection. Since this application is eligible for continued examination under 37 CFR 1.114, and the fee set forth in 37 CFR 1.17(e) has been timely paid, the finality of the previous Office action has been withdrawn pursuant to 37 CFR 1.114. Applicant's submission filed on 10/09/06 has been entered.

Claim Rejections - 35 USC § 102

The following is a quotation of the appropriate paragraphs of 35 U.S.C. 102 that form the basis for the rejections under this section made in this Office action:

A person shall be entitled to a patent unless –

(b) the invention was patented or described in a printed publication in this or a foreign country or in public use or on sale in this country, more than one year prior to the date of application for patent in the United States.

Claims 1-4,6 and 38-39 are rejected under 35 U.S.C. 102(b) as being anticipated by Richelsoph (USPN 5,964,760). Richelsoph discloses a screw and rod fixation assembly comprising a screw 12” with a screw head 40 having fixing means comprising insert 70 and body 30””. The insert 70 includes an inner passageway for fixing the screw 12” from movement relative to the assembly. The fixing means can both automatically and compressively fix screw 12” from movement. As Richelsoph explains “once the screw head 40”” is fully inserted into the pocket, the insert 70 snaps onto the screw head 40””. In this condition, polyaxial movement can be achieved. Locking can be achieved in two manners. The body 30”” can be pulled up relative to the screw 12”” with an instrument (not shown) without the rod 20”” being in place or pulled

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by the nut 26''' as the nut 26''' is tightened over the rod 20'''. This provides the surgeon with the option of adjusting the screw angle for abnormal anatomy and locking it prior to locking the rod 20''' to the assembly 10''' or locking the screw 12''' and the rod 20''' interfaces simultaneously when correction is not required" (col.8, lines 23-31). Rod seating means 16''' is operatively engaged with the fixing means for seating a rod therein. Because Richelsoph discloses the body 30''' can be pulled by nut 26''' which is used to tighten over rod 20''' by bringing the arms of the rod seating means together, it is inherent that there is at least some flexibility in the rod seating means. This also reads on claim 6. Locking means 22 comprising nut 26''' is for securing and engaging the rod and rod seating means. To the amended version of claim 1, the rod seat is disposed inside the inner passageway of the fixing mechanism and has a U-shaped inner wall (see col. 8, lines 34-37). As to Claims 2 and 3, rod receiving means 16''', it includes a body portion 30''' having two arms 24''', 14''' extending therefrom and being substantially parallel relative to each other. The two arms 24''', 14''' and the body portion 30''' form a U-shaped inner surface defining the seat portion thereof. With respect to claims 38 and 39, Richelsoph discloses a rod fixation assembly for fixing a screw and a rod comprising: a fixing mechanism (70,30''') having a substantially tubular body with an inner passageway and an inner wall surrounding the inner passageway; a rod seat (16''') inserted into the inner passageway, the rod seat (16''') having a pair of flexible portions (32'', 34'') extending generally parallel to one another forming a U-shaped inner surface adapted for seating a rod (20'') between the flexible portions (32'', 34''), the flexible portions (32'', 34'') being deflectable radially inwardly toward one another to compress against and around the exterior of a rod (20'') seated in the rod seat (16''') (see col. 5, lines 47-50). Further, the assembly comprises a locking nut (26'') in

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cooperable engagement with the fixing mechanism (30'''), the locking nut (26'') being axially displaceable to engage the flexible portions (32'',34'') of the rod seat (16'') and compress the flexible portions (32'',34'') radially inwardly to compress the flexible portions against and around the exterior of a rod seated in the rod seat.

Claim Rejections - 35 USC § 103

The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

Claims 5 and 7-8 are rejected under 35 U.S.C. 103(a) as being unpatentable over Richelsoph in view of Schlapfer et al (USPN 5,520,689). Richelsoph discloses the claimed invention except for the locking means being a set screw with a threaded outer surface. Schlapfer et al teaches a set screw 7 with a threaded outer surface 12, which engages the threaded inner surface 11. As to Claim 8, Richelsoph discloses "in this manner as the locking mechanism 22 forces the inner wall 18 to contour around and engage the rod 20 seated therein" (col. 3, lines 46-49). The embodiment as shown in Fig. 8 of Richelsoph functions in the same manner. The Schlapfer et al patent shows that the same function will be performed if the threads of the rod seating means disclosed by Richelsoph were on the inner portion of the arms and a locking screw with threads on its outer portion were used to engage the rod into the seating means. It would have been obvious to one having ordinary skill in the art to incorporate the threaded outer and inner surfaces as taught by Schlapfer et al into the screw and rod fixation

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assembly disclosed by Richelsoph, since it has been held that a mere reversal of the essential working parts of a device involves only routine skill in the art (*In re Einstein*, 8 USPQ 167), and further in order to provide a more secure engagement between the locking member and the rod seating means.

Allowable Subject Matter

Claims 32-36 and 40-41 are allowed.

The following is a statement of reasons for the indication of allowable subject matter: the prior art fails to disclose or reasonably teach each arm portion of the tubular body of the fixing mechanism comprising a thinned section adapted to break so as to separate at least a portion of the arm portion from the fixing mechanism in combination with the other limitations of claim 32. Further, the prior art fails to disclose or teach each flexible portion comprising a tapered outer surface being operable to engage the inner wall of the fixing mechanism and deflect radially inwardly by interference with the inner wall so as to compress the flexible portion against and around the exterior of a rod seated in the rod seat in combination with the other limitations of claim 38. Further to claim 41, the prior art does not disclose or teach the tubular body having an inner surface with inwardly-facing threads being adapted to engage and axially advance a rod securing fastener that is inserted in the passageway, and each arm segmented into portions adapted to be snapped-off from the substantially tubular body in combination with the other limitations of claim 41.

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Response to Arguments

Applicant's arguments with respect to claims 1-8 have been considered but are moot in view of the new ground(s) of rejection.

Conclusion


Any inquiry concerning this communication or earlier communications from the examiner should be directed to Candice C. Stokes whose telephone number is (571) 272-4714. The examiner can normally be reached on 8:00am - 4:30pm.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Cris Rodriguez can be reached on (571) 272-4964. The fax phone number for the organization where this application or proceeding is assigned is 571-273-8300.

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free). If you would like assistance from a USPTO Customer Service Representative or access to the automated information system, call 800-786-9199 (IN USA OR CANADA) or 571-272-1000.



Candice C. Stokes


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